

TEXT OF PROPOSED REGULATIONS:

In the following text, strikethrough indicates deleted text; underlining indicates added or amended text.

Section 3000 is amended to read:

3000. Definitions.

The following are definitions of terms as used in these regulations:

Certification means ~~either formal certification or self certification as defined in (1) or (2) as follows: (1) Formal certification means that a business concern has obtained verification that it meets the definition of minority, women, and/or disabled veteran business enterprise (M/W/DVBE) pursuant to Public Contract Code section 10115.1 or Military and Veterans Code section 999(g) from an agency that has been authorized by law or designated by the department as acceptable to issue such certification. (2) Self certification means that a minority business enterprise or women business enterprise has complied with all departmental self certification requirements by having an authorized representative(s) document that the firm (and/or specified subcontractor[s]) is an MBE(s) or WBE(s) as defined in subsections (d) and (e) and/or (f) of Section 10115.1 of the Public Contract Code.~~

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Disabled Veteran Business Enterprise means a business concern as defined in Military and Veterans Code section 999(g).

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Goal means a numerically expressed ~~minority, women, and~~ disabled veteran business enterprise objective as set out in Public Contract Code section 10115(c), that awarding departments and contractors are required to make efforts to achieve.

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Good Faith Effort means a concerted effort on the part of a potential contractor to seek out and consider ~~minority, woman, and~~ disabled veteran-owned and operated business enterprises as potential contractors, and/or subcontractors in order to meet the program participation goals.

~~Minority and/or Women and/or Disabled Veteran Business Enterprise focus paper means a publication that meets all of the following criteria: (1) has an orientation relating to the minority and/or women and/or disabled veteran business enterprise; (2) is known and utilized by members of the minority and/or women and/or disabled veteran business enterprise community; (3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at minority and/or women and/or disabled veteran business enterprises; and (4) is readily available within the geographical area for which the advertisement is placed and for which the services are to be performed.~~

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~~Minority and/or Women and/or Disabled Veteran Business Enterprise focus paper and trade paper means a publication that meets all of the criteria of a minority and/or women and/or disabled veteran business enterprise focus paper and all of the criteria of a trade paper.~~

~~Minority Business Enterprise (MBE) means a business concern as defined in Public Contract Code section 10115.1(e).~~

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Responsible Bidder means, in addition to other State contracting requirements, a bidder who has either met the ~~M/W/DVBE~~ disabled veteran business enterprise goals— or who has demonstrated that a good faith effort was made to meet ~~these~~ goals.

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~~Women Business Enterprise (WBE) means a business concern as defined in Public Contract Code section 10115.1(f).~~

NOTE: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115, 10115.2 and 10115.3, Public Contract Code.

Section 3475 is amended to read:

Article 8. ~~Minority, Women, and~~ Disabled Veteran Business Enterprises Program

3475. ~~Minority, Women, and~~ Disabled Veteran Business Enterprise Goals.

Section 3475 is amended to read:

(a) The ~~minority, women, and~~ disabled veteran business enterprise goals established in Public Contract Code section 10115(c) applies to the overall annual expenditures of the department. ~~Such~~ The goals shall be used for specific contracts unless the department determines that a more appropriate ~~minority, women, and~~ disabled veteran business enterprise goal shall be used for a specific contract based on one or more of the following conditions:

- (1) The contract is for an amount of \$15,000 or less.
- (2) The department has determined that there are no ~~minority, women, and~~ disabled veteran business enterprises within a reasonable market area.
- (3) The department has determined that the project or contract contains no opportunity for subcontracting.
- (4) The department has determined that an emergency exists involving the public health, welfare, safety, or security of a facility and/or the public.
- (5) The department has determined that the contract for services to be supplied exclusively by an individual or business concern involves minor or insignificant incidental services or supplies.

(6) The department has determined that the contract will result in the state being a user of services normally provided to the public at large, e.g., electricity, gas, water, garbage collection, use of common carriers, and/or over-night accommodations.

(7) The department has determined that there is only one person or entity that can reasonably and effectively perform the required services for which there is minor, insignificant, or no opportunity for subcontracting.

(8) The department has determined that extraordinary circumstances exist which make it impossible for the potential contractor or the department to comply with the ~~M/W/DVBE~~ disabled veteran business enterprise requirements.

(9) An amendment to an existing contract is either based on one or more of the above conditions or the amendment will not materially change the scope of services, as determined by the department.

(10) The work is to be performed pursuant to a change order or amendment to an existing construction contract.

(b) When it is necessary for the department to establish a more appropriate ~~minority, women,~~ ~~and~~ disabled veteran business enterprise goal for a specific contract, the department shall identify ~~minority, women, and~~ disabled veteran business enterprises and involve them in the contracting process to the extent reasonably possible.

NOTE: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115 and 10115.11, Public Contract Code.

Section 3476 is amended to read:

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3476. ~~Minority, Women, and Disabled Veteran Business Enterprises Bid and Sole Source Requirements.~~

(a) Within the time frames specified by the department's bid or sole source package, potential contractors shall be required to provide the department with either (1) or (2) below:

(1) Documentation, as required in the department's bid or sole source package, that they have met the ~~minority, women, and~~ disabled veteran business enterprise goals established in the respective package which shall include, but not be limited to, the names of their subcontractors; certification pursuant to section 3477; and dollar amounts of the subcontracts.

(2) Documentation, as required in the department's bid or sole source package pursuant to section 3478 of their good faith effort to meet the ~~minority, women, and~~ disabled veteran business enterprise goals established in the department's bid or sole source package.

(b) For the purpose of this article, a ~~minority, women, and/or~~ disabled veteran business enterprise must perform a commercially useful function. A ~~minority, women, and/or~~ disabled veteran business enterprise is considered to be performing a commercially useful function when it meets both of the following criteria:

(1) The business concern is responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing, or supervising the work involved; and performing work that is normal for its business services and functions.

(2) The business concern is not further subcontracting a greater portion of the work than would be expected by normal industry practices.

NOTE: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115, 10115.2 and 10115.3, Public Contract Code.

Section 3477 is amended to read:

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3477. Certification of a ~~Minority, Women, and/or~~ Disabled Veteran Business Enterprise.

(a) As specified in the department's bid or sole source package, potential contractors shall be required to provide the department with certification documentation that a business concern is certified as a ~~minority, women, and/or~~ disabled veteran business enterprise as defined in section 3000.

~~(b) In meeting the minority, women, and disabled veteran business enterprise goals, the participation of a business enterprise certified in more than one participation category may be counted toward the goal in only one of the categories in which the enterprise is certified.~~

NOTE: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115, 10115.2 and 10115.3, Public Contract Code.

Section 3478 is amended to read:

3478. Good Faith Effort Documentation.

A potential contractor shall be considered to have made a good faith effort when he/she submits, within specified time limits, documentary evidence, as required in the department's bid or sole source package, that all of the following actions were taken:

(a) Contact was made with the department to identify ~~minority, women, and~~ disabled veteran business enterprise business concerns.

(b) Contact was made with other federal and state agencies and local ~~minority, women, and~~ disabled veteran business enterprise organizations to identify ~~minority, women, and~~ disabled veteran business enterprises.

(c) Advertising was published in trade papers and ~~minority and/or women and/or~~ disabled veteran business enterprise focus papers, as specified in the bid or sole source package, unless time limits imposed by the department did not permit such advertising. Trade papers and

~~minority and/or women and/or~~ disabled veteran business enterprise focus papers, as defined in section 3000, must be acceptable to the department.

(d) Invitations to bid were submitted to potential ~~minority, women, and~~ disabled veteran business enterprise contractors.

(e) Bids submitted by ~~minority, women, and~~ disabled veteran business enterprises were fairly considered.

NOTE: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115.2-10115.4, Public Contract Code.

Section 3479 is amended to read:

3479. Monitoring ~~Minority, Women, and~~ Disabled Veteran Business Enterprise Goals.

(a) The department shall monitor adherence to the ~~minority, women, and~~ disabled veteran business enterprise goals established in Public Contract Code section 10115(c).

(b) Such monitoring may include, but is not limited to, visiting sites and requiring reports from contractors on ~~minority, women, and~~ disabled veteran business enterprise participation.

NOTE: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115 and 10115.3, Public Contract Code.